

1 If this guy would have done his job by the latter part of
2 1994, we would have an STA on everything and we wouldn't be
3 unauthorized for 15 paths or 14 paths. We would have only a
4 problem with whether it was -- whether it was activated on
5 January or whether the technical part of it was done on
6 January. But most of those paths, the technical part of it
7 was done that -- the end of third quarter of 1994.

8 Q Are you saying that there were applications for
9 all these paths that were filed in the third quarter of
10 1994?

11 A I am saying that if Pepper & Corazzini had done
12 their work and if I cleared those paths let's say September
13 21st or 22nd and it would have gone through the routine, he
14 should have filed the path by October and put an STA on it.
15 I would have had the authority by November or December.

16 And since these paths were all been activated on
17 this -- on April or February or March, none of these
18 discussions would come to place. That's what I'm saying.
19 And whether he -- whether he filed that, I'm not saying he
20 did not. But the one that you see here on that testimony
21 was the second filing. If he did any before, it was after
22 the emission designator change. Then he had to refile it
23 again. So --

24 Q There's one other thing that -- about STAs that I
25 wanted you to clear up for us. Is it your testimony that

1 Mr. Lehmkuhl was directed to routinely or automatically file
2 STA requests every time he filed an application or an
3 amendment to an existing license?

4 A My dealing was with Pepper & Corazzini as a whole.
5 And they were -- that was the procedure. It was there
6 before Mr. Lehmkuhl joined that company. And, sure, when we
7 were talking about, that was a procedure he was supposed to
8 follow to the fact that he was the one at some phone
9 conversation mentioned about the -- and I guess he had in
10 some of these letters that you have here that FCC's trying
11 to consolidate his licenses.

12 And as such, they are not as easily or as
13 routinely providing the licenses for paths. And I'm sure
14 that Mr. Lehmkuhl nor you know that we cannot just not
15 operate unless there is -- that's what STA is for. That's
16 why the government as the STA. We have to apply for the STA
17 before we would be able to turn on the path. So if
18 there's -- either there's a license or there has to be an
19 STA.

20 And if -- he advised me that FCC is not providing
21 the FCC because of all the administrative work that needs to
22 be done. Then the next thing would be that you'd have had
23 to generate the STA because we have to activate the building
24 and the customers and subscribers.

25 Q I'm not sure you answered the question. I -- the

1 question was really a very simple one.

2 A Yes. It was told that he should apply the STA.

3 Q Automatically?

4 A That's correct.

5 Q Okay. That's what I wanted to know.

6 A And Pepper & Corazzini all as a whole, yes.

7 JUDGE SIPPEL: While you're on that Exhibit 17,
8 did you sign any of these STA applications in advance?

9 THE WITNESS: This particular one is signed in
10 advance because the date is not there. But I just have to
11 point out that after April 28th -- I mean, April -- the end
12 of April and the 28th of his letter, I mentioned that he had
13 a couple that I recall now -- that he had a couple of these
14 still in his files.

15 I asked him that when you're filling that
16 application for STA, send them back to me and I'll review
17 them. And he did that. But he had this one as one of the
18 left-overs, so to speak; the signed signature of that form
19 that he had before. But I made sure that anything after
20 April I will review. But this is one of them because he put
21 the date on May 3rd. And the reason I'm pretty sure is that
22 after that date, everything was reviewed by me.

23 JUDGE SIPPEL: I'm finished.

24 MR. BECKNER: Okay, Your Honor. I didn't want --
25 if you had something more, I didn't want to cut you off.

1 JUDGE SIPPEL: No.

2 BY MR. BECKNER:

3 Q One last question about these licenses and STAs.
4 And just to make the record clear, Mr. Nourain, I take it
5 that -- it's true, is it not, that one way to have avoided
6 this problem would be for you simply to have phoned someone
7 at Pepper & Corazzini and said I'm going to turn on 30
8 Waterside Plaza next week; I want to just be sure that we've
9 got a license or an STA for that. But you never did that,
10 did you?

11 A No, I did not.

12 Q Okay. And regardless of what you think about what
13 responsibility Pepper & Corazzini has in Liberty's present
14 situation, the fact is that no one at Liberty including you
15 ever told them we're going to turn on a particular site; is
16 that okay, or anything like that.

17 A Not directly what particular sites, no.

18 Q Well, I mean, did you advise them in any way that
19 you were about to turn on any new microwave facility aside
20 from --

21 A No, no.

22 Q -- requesting that they do an STA or an
23 application?

24 A Not particularly a certain address, that's
25 correct.

1 MR. BECKNER: Your Honor, I'm about to move into a
2 different area. And I've got several more pages of my own
3 prepared examination. I certainly can continue, but I just
4 wanted to let you know in terms of our schedule for the rest
5 of today and tomorrow what your preference might be.

6 JUDGE SIPPEL: Well, what time does this Witness'
7 plane leave tomorrow?

8 THE WITNESS: Oh, I could be here until about 1:00
9 or 2:00.

10 JUDGE SIPPEL: And still be able to catch a plane?
11 If you left here at 1:00 --

12 THE WITNESS: No, my plane leaves about 2:00 --
13 1:59. So I should probably -- until 1:00 and that gives me
14 half an hour to get to the airport.

15 JUDGE SIPPEL: Well, we should have him out here
16 close to -- not much after 12:00 noon to make sure he gets
17 out of here. Is that doable if we start at 9:30 tomorrow
18 morning?

19 MR. HOLT: I'm going to try to review my notes and
20 streamline my questioning. I'm a little concerned depending
21 on the nature of the questioning tomorrow and where it goes
22 about being bumped up against a deadline.

23 JUDGE SIPPEL: We'll start at 9:00.

24 MR. BEGLEITER: We'll go to 9:00 if Your Honor
25 wishes.

1 MR. HOLT: It might be a little bit. Perhaps we
2 could start at 9:00. And by that time hopefully -- tonight
3 it will allow me to review the notes, streamline some of the
4 questioning. I don't think it makes sense to interrupt the
5 examination now.

6 JUDGE SIPPEL: Well, let's keep going. It's 4:40.
7 Let's use the other 20 minutes. Let's go to 5:00. Are you
8 okay?

9 THE WITNESS: I'm fine, sir.

10 MR. BECKNER: Okay. Good.

11 BY MR. BECKNER:

12 Q I'd like you to turn to Time Warner/Cablevision
13 Exhibit 13 which is in the large notebook.

14 A Yes, I have it.

15 Q Now, this is a copy of an affidavit that was filed
16 in the Federal District Court in New York. And that is your
17 signature on the last page, is it not?

18 A That's correct.

19 Q And this -- unlike these FCC applications, this is
20 not something you signed in blank?

21 A This one was faxed to me and I signed it. No.

22 Q I mean, you read this before you signed it --

23 A That's correct.

24 Q -- did you not?

25 A That's correct.

1 Q And you made sure that it was accurate as far as
2 you knew?

3 A Yes.

4 Q Okay. Paragraph 5 which is on -- well, there's a
5 bunch of numbers on these pages. But it's on the page
6 that's marked 004.

7 A Yes.

8 Q Okay. The affidavit says, "I am advised that Time
9 Warner has opposed Liberty's pending application to the
10 Federal Communication Commissions for various 18 gigahertz
11 microwave licenses." Was that sentence accurately
12 reflecting what you knew as of the date that you executed
13 this affidavit?

14 A What do you mean by sounds accurate to reflect?

15 Q I'm sorry. Does that sentence accurately reflect
16 what you knew at the time that you signed this affidavit?

17 A I knew what?

18 Q That Time Warner had opposed Liberty's pending
19 applications to the FCC for various 18 gigahertz microwave
20 licenses.

21 A Not the way you are raising that question, no. I
22 was -- I was -- I knew that some of those applications; not
23 that Time Warner is opposing Liberty's applications. It
24 says various applications. My understanding was -- yes,
25 that was -- that was objection to activation of some of

1 Liberty's applications.

2 Q Well, now I'm going to have to ask you to be
3 specific here. There is a sentence here. If you want to
4 read it yourself instead of having me read it, that's okay.

5 A Sure.

6 Q And all I want to know is if the first sentence of
7 paragraph 5 is or is not true and correct as of the date you
8 executed this affidavit.

9 A Well, true to my interpretation, yes.

10 Q Okay. That's all I want to know. Thank you.
11 Now, based on that knowledge, did you not expect that the
12 result of Time Warner filing these oppositions would be to
13 slow down the processing of Liberty's applications?

14 A No, because this particular one has a different
15 story because I knew that was -- verbally I knew that there
16 was some litigation going on on interconnecting --
17 interconnecting issues with Time Warner. And I knew that I
18 would not be activating any microwave system which relates
19 to that. So I -- at the time of this deposition, this
20 only -- discussion with this affidavit was all on an
21 interconnect building. So, therefore, I knew I should not -
22 - I will not be able to activate any interconnecting
23 building by microwave because of the -- some of the problems
24 that were going on between Liberty and Time Warner.

25 Q But you didn't think that these, as you put them,

1 problems would have any effect on the other applications
2 that were filed?

3 A How would I do? I'm not a lawyer. I'm an
4 engineer. I just know what I'm told. I was told that there
5 was the problem with the interconnection connecting
6 buildings. Therefore, you're not supposed to activate those
7 things with the microwave. And I said fine. What -- what
8 one has to do with the other is that there are other
9 applications, I don't understand that. I didn't -- I didn't
10 look at it that way because, also, number two, it said the
11 various part.

12 It didn't say for all pending applications. And
13 that's what my understanding was. It's not only my
14 understanding. That's -- in addition to that, that was what
15 I was discussing with the lawyer who prepared that with me.
16 It's not only my assumption. We talked about this thing.
17 And that was the exact -- this affidavit was just for the
18 interconnecting building. And all discussion and everything
19 was based on that.

20 And I understood that everything had to do with
21 the interconnecting building which was the purpose of this
22 affidavit and my discussion with that and my knowledge at
23 the time; that Time Warner and Liberty are having some kind
24 of -- as I said, I don't know they had legal -- they had
25 some problems with some of the interconnecting buildings.

1 Q And you weren't even sufficiently curious about
2 the possibility that the fact that Time Warner was opposing
3 at least some applications might have an effect on other
4 applications? You weren't curious about that to even ask
5 the lawyer whether or not those other applications might be
6 affected?

7 A No, my discussion -- no, my discussion with this
8 lawyer was that some -- some affidavit or some information
9 came from some engineer at Time Warner which was challenging
10 or questioning some of the -- how we can activate some of
11 the interconnecting buildings with microwave, not with --
12 with interconnecting with a cable.

13 And I was just -- the whole purpose was to
14 rebuttal, to answer that technical information with the
15 lawyer. And that's why we going through that. And at the
16 end, we were -- we were -- he made sure that I understand
17 that there is objections over the activation of the
18 microwave system for this interconnecting buildings at the
19 time. And in addition to that, I knew there was some
20 problems between -- about those which was -- started I guess
21 in 1994 sometime.

22 Q So even though you knew that Time Warner Cable was
23 opposing Liberty's applications for new microwave paths, you
24 continued to turn these on in March and April of 1995
25 because you thought that Time Warner's opposition only had

1 to do with the paths that were to replace cable
2 interconnections. Is that right?

3 A I understood what I was told by our lawyer at the
4 time; that that was the ones that there were -- there were
5 objections to. And that's what this Number 5 indicates. If
6 I knew that was in all of them, I would do what I did on
7 April -- the end of April that I found out about the others,
8 sure. I would do that then. I did that April 25. What you
9 have that assumption I wouldn't have done it on February 25?

10 Q Do you have any understanding of what might happen
11 to Liberty if it was found to have operated microwave
12 facilities without a license?

13 A When it comes to operating any facilities which
14 government asks for a license, I don't need to look at
15 Liberty or anybody else. I have to look at my own
16 conscience. I do not turn the system if I don't know it's
17 authorized, sir. It has nothing to do with who I work, what
18 I do. That's the answer to your question.

19 Q No, I don't think you did. I -- what I meant to
20 ask you was simply whether or not you had any understanding
21 of the consequences to the company of making a mistake like
22 not having an license for an operating facility.

23 A Oh, to answer your question --

24 Q Yes, sir.

25 A -- to answer for that, I know you should not turn

1 on the system without authorization. The consequences of it
2 is just a regulation of the government agencies and the
3 people who are not activating it. I'm not legal and I never
4 -- never know that detail of it, what is the consequences is
5 going to be to that.

6 Q But I take it from your answer -- the previous
7 answer you gave, that you understood that this was -- that
8 turning on a microwave facility without a license was a bad
9 thing, right?

10 A Of course.

11 Q Okay. And -- and yet what you've been telling us
12 this afternoon is that repeatedly you turned on microwave
13 facilities based on an assumption that something had been
14 done without knowing whether or not it in fact had been
15 done.

16 A No, that -- you're simplifying it. Based on the
17 consultation with the lawyer that they hired as an FCC
18 lawyer during three or four years, and that's what the whole
19 process was taking place. And based on that, I have done
20 that. And in addition to that, as I said, we have a lot of
21 licenses. We have a lot of STAs coming in. And I see the
22 STAs. It's not as simple as you that you put it in, sir.

23 Q Well, now, you said you consulted with the lawyer.
24 Did the lawyer ever tell you that you could wait a certain
25 amount of time and then confidently turn on your microwave

1 facility without worrying about if you had a license or not?

2 A Well, the lawyer told me that you have to file for
3 the application and the FCC within a five -- you know,
4 within a couple of weeks or so, they will probably provide
5 you with authorization. And then you can turn it on. And
6 there was -- as I mentioned before, there are a handful of
7 applications that we had minus this emission designator
8 problem.

9 There were a handful of the buildings, they were -
10 - they were activated that we did not go through more than
11 close to a month -- months of elapse time because, as I
12 explained to Your Honor, there are a lot of other things
13 involved in that. And all of those processes have to all
14 take place. And licensing was part of it. And all of those
15 were taking place and I was getting routinely the STAs. And
16 based on that --

17 Q Let's just clarify. No lawyer ever told you, Mr.
18 Nourain, that you could wait a certain number of days after
19 you did a coordination and confidently be sure that you
20 could turn on a new microwave facility legally.

21 A I was -- I was also getting --

22 Q Isn't that correct?

23 A That's correct.

24 Q Okay. Fine. And no lawyer ever told you with
25 respect to any of the facilities that are in Appendix A to

1 the hearing designation order that we looked at earlier,
2 that you had either a license or an STA before you turned on
3 those facilities, isn't that correct?

4 A Could you repeat the last part or refer to some
5 documents?

6 JUDGE SIPPEL: Get it right to the tab.

7 MR. BEGLEITER: Tab 30, Your Honor. Is that what
8 you're talking about, Mr. --

9 BY MR. BECKNER:

10 Q Look at Tab 30.

11 MR. BECKNER: Thank you, Mr. Begleiter.

12 THE WITNESS: 30?

13 JUDGE SIPPEL: It's Tab 30 of the Time Warner --

14 THE WITNESS: Oh, yes. That list. Okay.

15 BY MR. BECKNER:

16 Q Okay. Do you have the list in front of you?

17 A Could you -- yes. Could you repeat --

18 Q No lawyer ever told you, Mr. Nourain, did he or
19 she, that with respect to any of the addresses listed here,
20 that you had a license or special temporary authority prior
21 to the date that you actually turned these facilities on --

22 A No.

23 Q -- isn't that correct?

24 A That's correct.

25 Q Okay. Do you actually work on electronic

1 equipment yourself, Mr. Nourain?

2 A You mean -- what do you mean by that? Work -- I -
3 -

4 Q Well, I mean do you actually get your hands in
5 there and take this out or fix this or repair that like a
6 technician would?

7 A It depends on what electronics. No, I don't take
8 apart the television or a stereo system. But if comes to
9 the transmitter or the microwave, sure, I open that up and
10 do the test on that if --

11 Q Okay. And --

12 A You're asking a very broad question.

13 Q Okay. And when you open these transmitters up,
14 are there high voltages inside of them when they're -- I
15 mean, when they're normally operating, are there high
16 voltages inside these transmitters?

17 A The type of transmitter I'm referring is the very
18 low -- low power transmitters. And there is a conversion
19 between high power voltage to have some kind of a power
20 supply to this transmission. So you work on that. No, they
21 are not sensitive equipment -- sensitive units. They are
22 not -- they are not dangerous.

23 Q And what about the power supply? Is that
24 dangerous?

25 A Oh, of course. Power is supply is dangerous,

1 always dangerous.

2 Q Okay. And if you -- before you work on a power
3 supply, don't you make certain that it's disconnected from
4 the main line -- the power line?

5 A I'm an electronics engineer. I'm not an expert of
6 the power system. That's a different division of the
7 engineering. I'm a systems engineer and an electronics
8 engineer. For the power surges, you have to ask your
9 question somewhere else. I don't -- I don't know.

10 Q Okay. In any of the equipment that you've worked
11 on, I take it then you're saying there's no dangerous
12 voltages present when it's operating?

13 A I only mentioned about the transmitter equipment
14 that I open at the bench and test it out. That is not
15 dangerous. But if all the equipment is connected, you have
16 to go over details of it. Your question cannot be answered
17 by -- by just a very simple answer.

18 Q Okay. Fine. I mean, I'm not an engineer either.

19 A That's correct.

20 JUDGE SIPPEL: The answers come easier at this
21 hour, don't they, sometimes.

22 MR. BEGLEITER: Your Honor, I want to give Mr.
23 Beckner a lot of latitude because it is our burden. But I'm
24 mystified at this line of questioning.

25 MR. BECKNER: Your mystification is at an end

1 because my line of questioning is at an end.

2 MR. BEGLEITER: Okay. Thank you.

3 JUDGE SIPPEL: Well, I appreciate the absence of
4 the objections because it's permitted us to go forward a lot
5 faster than if we were doing a lot of arguing. It's almost
6 5:00 up there, Mr. Beckner. Do you have one or two more
7 or --

8 MR. BECKNER: Well, actually, I think this is
9 our -- I'm about to move into asking about different
10 documents. So it's probably a good place to break.

11 JUDGE SIPPEL: All right. Well, let's --

12 MR. BECKNER: Because that would not be one or two
13 more.

14 JUDGE SIPPEL: Let's recess then until -- how much
15 -- how much longer do you think you have with this Witness
16 based on your current pace here?

17 MR. BECKNER: Forty-five minutes or so, maybe an
18 hour.

19 JUDGE SIPPEL: All right. We better start at --
20 we better start then at 9:15 tomorrow instead of 9:30.
21 You're still under oath which means that -- you're still
22 under oath. But I mean in addition to that, you're not to
23 talk about your testimony with any of the other witnesses in
24 this case until after everything is finished here. Then you
25 can talk it over.

1 All right. Then we're in recess until 9:15
2 tomorrow. Thank you.

3 MR. BEGLEITER: Your Honor?

4 JUDGE SIPPEL: Yes?

5 MR. BEGLEITER: One thing. On Friday afternoon,
6 Mr. Holt suggested that the presence of all counsel be noted
7 for the record. We have no objection then, but we think the
8 same should apply today since there are counsel here who I
9 think should be identified.

10 JUDGE SIPPEL: Well, there -- I mean, anybody at
11 counsel table I'm assuming is here as representation. But
12 whatever was done for you should be done for them.

13 MR. BEGLEITER: Yes, I don't understand why the
14 suggestion was made on Friday afternoon. But since it was
15 made and we complied, I'd ask that -- that the other counsel
16 here be identified, as well.

17 JUDGE SIPPEL: Well, they're here as observers in
18 the courtroom. I mean, I'm not going to require that.

19 MR. BEGLEITER: Okay.

20 JUDGE SIPPEL: Is there anything else now about
21 scheduling? Let's go off the record.

22 (Whereupon, at 4:59 p.m. on Monday, January 13,
23 1997, the hearing was recessed, to reconvene at 9:15 a.m. on
24 Tuesday, January 14, 1997.)

25 //

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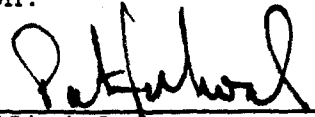
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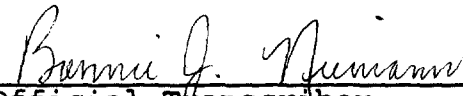

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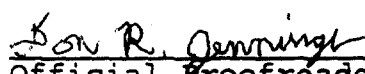

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